REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 1-25 will be pending in the application subsequent to entry of this Amendment.

Response to Claim Objections

In item 2 of the Official Action the examiner criticizes claims 3-6; these claims have been appropriately amended.

In item 3 of the Official Action the examiner questions the term "fat note" and regards it to be vague.

The examiner also offers his own "interpretation" of the term to which applicants do not agree. The examiner interprets the term "fat note" to mean a generally hearty, savory and/or meaty taste or aroma; or in general anything that exhibits qualities known in the art as umami".

The examiner is correct in that umami means "a generally hearty, savory and/or meaty taste or aroma"; *see* for example reference a. which has been provided by the examiner (Flavor of Meat, Meat Products and Seafoods, p. 198). However, the examiner is not correct by suggesting that "fat note" and "umami" are the same. Indeed, the aim of the present invention is to improve the fat note while preventing the addition of a bouillon-like, brothy taste (i.e. umami) to the food (page 2, lines 17-20). In other words, the aim is to improve the "fat note" while preventing the "umami" taste.

In order to more completely define the term "fat note" and to advance examination, claim 1 has been amended to expand the discussion which is based upon the description found from page 3, line 30 to page 4, line 3. Claim 2 has been revised and written in independent form consistent with the changes made to claim 1. Claim 2 features the use of between 10 and 50% of 5'-ribonucleotides. It is submitted that this amendment of claim 1 coupled with the above remarks will resolve the objections stated in items 2 and 3 of the Official Action.

Response to Rejection Under 35 USC §112, Second Paragraph

In item 4 of the Official Action the examiner comments that the claims are unclear primarily on the basis of a broad range/narrow range. The examiner's comments in items 5 and 6 have been carefully considered and the involved claims appropriately revised with preferred ranges and values being made the subject of new dependent claims. It is submitted that the

claims are now in proper order and fully compliant with 35 USC §112. Favorable consideration is requested.

Response to Claims Based Upon Alleged Anticipation

Before discussing the deficiencies of the cited documents, it is important to bear in mind the legal requirements for establishing anticipation. To anticipate a claim, a single prior art reference must disclose each and every element of the claimed invention, either explicitly or inherently. *In re Schreiber*, 128 F. 3d 1473, 1477, 33 U.S.P.Q.2d 1429, 1431 (Fed. Cir. 1997), citing *Glaxo Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 34 U.S.P.Q.2d 1565 (Fed. Cir. 1995); *Verdegall Bros., Inc. v. Union Oil Co.*, 814 F. 2d 628, 631, 2 U.S.P.Q.2d 1501, 1503 (Fed. Cir. 1987) *cert denied*, 484 U.S. 827 (1987).

35 USC §102(b): claims 1, 8-11

According to the Examiner, claims 1 and 8-11 as filed are rejected as being anticipated by Potman as evidenced by "Creaminess: A Question of Flavor".

Amended claim 1 relates to a method to enhance the specific fat note in the taste and/or in the aroma and/or in the mouthfeel of the food with a reduced amount of fat making it more similar to the taste and/or aroma and/or mouthfeel of the corresponding full-fat food by providing only a minimal taste or specific note of the yeast extract itself. It is from this basis the reference will be reviewed.

Potman (US 5,288,509)

Applicants do not regard Potman as relevant for the assessment of novelty and/or inventiveness of the present claims. The invention disclosed by Potman is simply an improved production process for a 5'-ribonucleotide containing yeast extract. The improvement resides in the conditions under which the RNA-degrading activity is carried out. By applying oxidizing conditions, it was found that the 5'-ribonucleotide content was higher compared to not applying these conditions. All of the examples in Potman describe several of these (comparative) experiments carried out anaerobically (flushed with helium or nitrogen) or aerobically (flushed with oxygen).

Nowhere in Potman are experiments presented wherein the yeast extracts with higher 5-ribonucleotide content are actually evaluated with respect to their flavor properties. In two passages, Potman is referring to the fact that the yeast extract may be used as food flavorant:

column 4, lines 33-51 and column 7, lines 32-36. However, these paragraphs only refer in general terms their use in food such as soups, meat products, instant gravies, margarine, frying fat, drinks, bakery products, cheese, confectionary products and the like.

Column 7, lines 32-36 refers to an earlier disclosure of the applicant (EP-A1-191,513) which discloses literally the same listing of food products: compare Potman, column 7, lines 32-36 with EP-A-191,513 column 3, lines 51-61:

> One embodiment of the present invention is therefore a process for flavouring foodstuffs by incorporating in the foodstuff a flavour as disclosed hereinbefore. More in particular the flavour material is used to improve the flavour of soups, meat products, instant gravies, margarine, frying fat, drinks, bakery products, cheese, confectionary products and the like. The amount of flavour used in the foodstuffs varies widely but usually ranges between 0.1 and 10% (calculated as dry yeast extract flavour on the foodstuff ready for consumption). Preferably these amounts range between 0.15 and 5%.

In other words, Potman in their U.S. patent and also their earlier disclosure EP-A1-191,513 only relate to the conditions to produce a yeast extract with slightly higher amounts of 5'-ribonucleotides which may be used in the same way as the prior art yeast extracts in existing food applications. No specific advantages of the new yeast extracts are reported apart from the fact that their composition and yield are adjustable to the specific needs of the yeast extract as (savory) flavor improver (column 1, lines 41-45 of Potman).

In contrast to Potman, the present invention relates to a completely different application area, namely, to the area of food products with a reduced amount of total fat and the associated technical problem that such reduced fat food products lacks richness of flavor compared to the full-fat product (*see* page 2, lines 9-11). The examiner will note applicants' claims are directed to methods and not compositions so the stated objective of the claims must be taken into account.

According to the Examiner, "Potman teaches a yeast extract comprising free amino acids and at least 8% 5'-ribonucleotides (column 4, lines 15-22) for improving the fat note in taste and/or aroma and/or mouthfeel of a food with a reduced amount of fat".

Applicants respectfully disagree with the examiner. The last part of the sentence quoted from the Official Action cannot be found in Potman and exists only as an "interpretation" of the examiner. From the food list of Potman (column 4, lines 44-46: soups, meat products, instant

gravies, margarine, frying fat, drinks, bakery products, cheese, confectionary products and the like) it must be concluded that these are the normal full fat food products, in particular "instant gravies", "margarine", "frying fat" but also "cheese". All of the art cited by the examiner in relation to actual reduced fat food products always explicitly refer to such food products as being "reduced fat", "low fat" etc. In other words, when not explicitly mentioned in the art, food products not being designated as reduced fat, low fat, etc., must be interpreted and understood and applied as prior art as the full-fat, normal products.

Consequently, Potman also does not address the technical problem that reduced fat foods have a reduced richness of flavor compared to the full-fat product let alone the solution that the addition to a yeast extract with at least 8% 5'-ribonucleotides solves that problem while providing only a minimal taste or specific note of the yeast extract itself (the so called clean taste).

Therefore, applicant submits that Claims 1 and 8-11 are not anticipated by Potman as evidence by "Creaminess: A Question of Flavor".

35 USC §102(e): Claims 1-5, 7-8

The examiner applies WO 03/063614 "based upon the earlier effective U.S. filing date of the reference". The "effective" U.S. filing date is the international filing date of July 12, 2004. In contrast, applicants claim benefit in the present application of European application 03102180.1 filed July 16, 2003.

According to the Examiner, claims 1-5 and 7-8 are rejected as being anticipated by Kortes et al WO 03/063614 since, according to the Examiner, "Kortes teaches a method for using the yeast extract as claimed in claims 1-5 and 7-8 in a food with a reduced amount of fat to improve the fat note qualities of the food product".

Applicants again respectfully disagree with the Examiner. As with Potman, the last part of the sentence quoted from the Official Action as being from Kortes in fact cannot be found in Kortes and is again an interpretation of the Examiner. Kortes teaches that 5'-ribonucleotides may be applied in soups, sauces, marinades, flavor seasonings, meat, vegetables, and gravies (page 1, lines 29-30), none of which are being designated as "reduced fat", "low fat", etc., and which must therefore be interpreted as full-fat, normal products for the reasons explained above.

Furthermore, Kortes teaches that 5'-IMP, 5'-GMP, and monosodium glutamate are

capable of enhancing the savory taste described as mouthfeel or umami. However, as explained herewith above, the aim of the invention is not to enhance the savory (= brothy =umami) taste. Instead, it is to enhance the specific fat note of the food with a reduced amount of fat while preventing the unwanted addition of a savory (= brothy = umami) taste to the food.

Even in the event that the person trying to solve the problem of the invention incidentally came across Kortes (which does not refer to reduced fat foods and hence relates to a different technical problem), he would be dissuaded to apply the yeast extract as described on page 1 of Kortes since the latter teaches that such yeast extracts attribute a savory taste, which is exactly what he wants to prevent.

Since Kortes relates to a different technical problem than the present invention (improving the taste of beverages versus enhancing the fat note of a food with a reduced amount of fat while preventing the specific note of the yeast extract itself) this reference is not relevant for the assessment of novelty and/or inventive step and of the present claims.

Response to Rejections Under 35 USC §103(a)

Items 13 and 14 include separate rejections of various dependent claims as allegedly being unpatentable over various of the cited documents, primarily the Potman U.S. patent as discussed above. Applicants traverse these rejections. The examiner's comments about the disclosures of the cited documents are not disputed here, but the opportunity to dispute them in the future is reserved. Moreover, claims depending from those independent claims (discussed above) are also not made obvious by the documents because the limitations of an independent claim are incorporated into their dependent claims (MPEP §2143.03). Accordingly, the rejections stated in items 13 and 14 will not be further discussed at this time but applicants reserve the right to do so at a later date.

For the above reasons it is respectfully submitted that the claims of this application define inventive subject matter. Reconsideration and allowance are solicited.

Respectfully submitted,

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